

Judgment Sheet
IN THE PESHAWAR HIGH COURT, PESHAWAR
(Judicial Department)

Criminal Revision No.28-P/2021

"Raza Shah vs. Superintendent Central Prison, Peshawar"

Date of hearing: **29.07.2021**

Mr. Muhammad Furqan Yousafzai, advocate for the petitioner.

M/S Umar Farooq, Muhammad Bashir Naveed, Shakeela Begum & Sardar Ali Raza, AAGs for the State.

JUDGMENT

MUHAMMAD NAEEM ANWAR, J. The petitioner, through the instant criminal revision, filed under section 439 r/w section 435 Cr. P.C, has challenged the order of the learned Additional Sessions Judge-XII, Peshawar dated 18.12.2020, vide which, his appeal, for conversion of consecutive sentences into concurrent, was dismissed.

02. Facts forming the background of this petition are that, against the petitioner, five FIRs under section 489-F of PPC, 1860 were registered by the different complainants at District, Peshawar, out of which, as per contents of the petition, in one FIR bearing No.324 dated 01.07.2016 under section 489-F,420,406 PPC, registered at Police Station, Tehkal, District, Peshawar, the petitioner had resolved the dispute by patching up the matter with the complainant namely Bakht Zada while in rest of FIRs (four in number), he had pleaded his guilt before the learned trial Court, the particulars whereof are as under:

Table-1

Sr #	FIR #	Date of FIR	Section of law	Police Station	Name of complainant
1	1452	01.12.2016	489-F PPC	Tehkal	Haider Ali
2	174	04.03.2017	489-F PPC	Tehkal	Muhammad Aslam Khan

3	758	01.09.2017	489-F PPC	Tehkal	Muhammad Ali
4	759	02.09.2017	489-F PPC	Tehkal	Irfan Ali

03. In case tabulated at serial No.1, FIR No.1452 dated 01.12.2016, the petitioner was charged for issuance of cheque amounting to Rs. 9,95,000/-, for the case at serial No. 2 i.e., FIR No.174 dated 04.03.2017 he was charged for commission of offence pertaining to the cheque issued with alleged dishonest intention for payment of Rs.25,80,000/- (twenty-five lac & eighty thousand), for the case at serial No. 3 of FIR No.758 dated 01.09.2017, the disputed amount was Rs.16,00,000/- (rupees sixteen lac), whereas, for the case at serial No.4 the disputed amount in case FIR No.759 dated 02.09.2017 was Rs.14,00,000/- (rupees fourteen lac). In all the above mentioned four FIRs, different cheques of various huge amounts were handed over to the complainants by the petitioner, which, on presentation before the concerned Banks, were dis-honored due to insufficient balance in the petitioner's account. The details of sentences awarded to the petitioner by the learned trial Court, are as under:

Table-2

Sr #	FIR #	Date of FIR	Date of order of the Court	Name of Court	Sentence
1	1452	01.12.2016	01.07.2020	Mr. Muhammad Farooq Ahmad, JMIC-I, Peshawar	03 years RI with fine of Rs.20,000/- or in default to further undergo 01-month SI
2	174	04.03.2017	08.09.2020	Mr. Muhammad Riaz Ahmad, JMIC/MTMC, Peshawar	03 years RI with fine of Rs.10,000/- or in default to further undergo 01-month SI
3	758	01.09.2017	01.07.2020	Mr. Muhammad Farooq Ahmad, JMIC-I, Peshawar	03 years RI with fine of Rs.20,000/- or in default

					to further undergo 01-month SI
4	759	02.09.2017	01.07.2020	Mr. Muhammad Farooq Ahmad, JMJC-I, Peshawar	03 years RI with fine of Rs.20,000/- or in default to further undergo 01-month SI

04. Learned counsel for petitioner contended that not only all the three cases of serial Nos. 1, 3 & 4 of table No-2 were pending before one and same Court but were also fixed for the same date i.e., 01.07.2020 and in all the cases the petitioner had pleaded his guilt but the learned trial Court has awarded maximum sentence of three years with fine of Rs. 1000 in accordance with the provisions of section 489-F of the Pakistan Penal Code 1860, more importantly, while convicting & sentencing, the learned trial Court has totally ignored the mandate of section 35 and 397 of Cr. P.C. which resulted into miscarriage of justice, improper exercise of jurisdiction pertaining to discretion and the philosophy and logic of reformatory punishment. He added that on 08.09.2020, when in the case at serial No.2 of Table 2, the petitioner was already in jail being convicted and sentenced in the above referred cases and in such circumstances the Court was required to extend the benefit of section 35 and 397 of the Code of Criminal Procedure, 1898 for which the petitioner filed an appeal before the learned Sessions Judge, Peshawar, for conversion the consecutive sentences to concurrent, awarded to him by the learned trial Court. The appeal was entrusted to the learned Additional Sessions Judge-XII, Peshawar but his appeal was dismissed vide order dated 18.12.2020, hence, this criminal revision. He termed

the running of all the sentences consecutively as unjust, excess of exercise of jurisdiction so vested in trial court and the dismissal of appeal by the learned appellate court as illegal and against the law. Conversely, Ms. Shakeela Begum, Mr. Sardar Ali Raza, Mr. Bashir Naveed & Mr. Umer Farooq learned Additional Advocates General argued that section 35 of Cr. P.C does not applicable to the matter in hand whereas exercise of jurisdiction under section 397 of Cr. P.C was the discretion of learned trial court which was exercised aptly and judiciously while considering the facts and circumstances of the cases and that the petition has got no merit thus, requires dismissal.

05. Arguments heard and record perused.

06. Admittedly, for all the offences separate challan was submitted before the court. Though three out of four cases were pending in one and the same court however, the trials were undeniably separate, in such circumstances when learned counsel for the petitioner was confronted with the provisions of section 35 of Cr. C.P, which deals with the sentence in case of conviction of several offences at one trial, who frankly stated at the bar that section 35 of the Criminal Procedure Code, is not applicable to the case of petitioner.

07. Evidently, in all the cases accused has pleaded his guilt before the trial court after framing of charge. Earlier when charged was framed he denied the allegations against and claimed trial however, in three out of four cases when he admitted the commission of offence he was not served with a notice as required under section 243 of CrPC which was mandatory in accordance with law. Rel: Sharif Khan vs. The

State (1991 P Cr. L.J 1761) for convenience section 243 is reproduced as under:

Section 243, Cr. P.C.-- If the accused admits that he has committed the offence with which he is charged, his admission shall be recorded as nearly as possible in the words used by him; and if he shows no sufficient cause why he should not be convicted, the Magistrate may convict him accordingly.

08. It appears from record that on the basis of admission, the learned trial Court without serving him with show cause notice convicted and sentenced him in all the three cases on the same date and in each case, he was awarded three years simple imprisonment with fine. This was done when the accused /petitioner was produced in custody, solely on the basis of application, when he placed himself at the mercy of court. In the case of Akhtar Zareen Vs. The State (2020 P Cr. LJ 229) Honorable Sind High Court has held that: -

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I shall further add that there had never been any doubt to the legal position that every accused, regardless of charge against him, was/is entitled for an expeditious trial which (expeditious), however, never allows the 'judge' to make departure from mandatory procedure and to ignore settled principles of law rather invites capacity of the judge to ensure legal disposal of the case by using all available legal courses, provided by the law and procedure themselves. This is so, because a delayed justice is not a justice at all and even may compel the accused to accept what he never did.

09. Undisputedly, the petitioner has not challenged his conviction before the competent forum however, for the purpose of determination as to whether the petitioner is entitled for exercise of discretion regarding conversion of his sentence in different cases from consecutive to concurrent, the circumstances of the cases in which his conviction was recorded is one of the requisites which are to be seen as held

by the Hon'ble Supreme Court in the cases of Sajjad Ikram and others vs. Sikandar Hayat and others (2016 SCMR 467) that:

"It is clear from section 397, Cr. P.C. that the Court, while analyzing the facts and circumstances of every case, is competent to direct those sentences in two different trials would run concurrently. In that eventuality, the Court has wide power to direct that sentence in one trial would run concurrently. The provision of section 397, Cr. P. C. confers wide discretion on the Court to extend such benefit to the accused in a case of peculiar nature, like the present one. Thus, extending the beneficial provision in favor of the appellant, would clearly meet the end of justice. We, therefore, observe that there is nothing wrong in treating the sentences of imprisonment for life of the convict/appellants on three counts to run concurrently, in view of facts and circumstances discussed above."

10. Although in the cases of Ali Khan Kakar (2012 SCMR 334) & Ghulam Farid (2013 SCMR 16) the HRC and Criminal Suo Moto Review Petition were dismissed however, it was enunciated in both the cases that for exercising discretion the court would have to go through from the facts and circumstances of the cases. The aim of imprisoning a person is not merely to dump him in a jail. The aim is equally to reform him during the period of incarceration so that he may be brought back into the society as a peace-loving and law-abiding citizen. The logic of imprisonment is not only to incarcerate the accused person within four walls of the jail; the purpose is to reform the convict. Further, a sentence of three years' imprisonment has to commensurate within the offences. In the present case, the petitioner has been convicted for the offence under section 489-F PPC for the period of three years in each however, in case the sentences were not to run concurrently, the petitioner would have to

serve a total of 12 years if he pays the fine in each case otherwise would remain there for further period of four months (SI), such as, further incarceration of the petitioner beyond three years with one month (SI) for failure of payment of fine. Keeping in view the circumstances of the case and the powers of this Court it is the judicial obligation of the High Court to undo a wrong in course of administration of justice or to prevent continuation of unnecessary judicial process. This is founded on the legal maxim "quando lex alicui concedit, conceditur et id sine qua res ipsa esse non potest". The full import of this maxim is whenever anything is authorized, and especially if, as a matter duty required to be done by law, it is found impossible to do that thing unless something else not authorized in express terms be also done, may also be done, then that something else will be supplied by necessary intendment. The whole idea is to do real, complete and substantial justice for which it exists. Ref: Gian Singh v. State of Punjab, (2012) 10 SCC 303

11. It is pertinent to mention here that one of the argument of respondents that this Court can exercise such power for conversion of sentence from consecutive to concurrent only under section 561-A and not under section 439 read with section 435 CrPC. I have gone through from the relevant provisions of the code and of the opinion that the matter before this Court is not for conversion of conviction into acquittal therefore, it is held that power under Section 397 Cr. P.C. can also be exercised by the Court, while exercising jurisdiction as Appellate Court or revisional

Court. Reference can be made to the case of M.R. Kudva Vs. State of Andhra Pradesh 2007 R.Cr.D. 236 (SC), decided by the Indian Supreme Court.

12. Accordingly, it can safely be held that that discretion to make the sentences to run consecutively or concurrently would be governed by different consideration, like facts of each case, nature and character of the offences, criminal history sheet and record of the offender, his age, sex. In fact, it is not possible to exhaustively lay down all the factors that may be relevant to be taken into consideration and basically it would depend upon facts of each case to be so noted by the Court while exercising its discretion in this regard.

13. A Full Bench of Allahabad High Court in Mulaim Singh v. State, reported in 1974 Cr. L.J. 1397, examined the issue in question in detail and arrived at the conclusion as under: -

"The discretion conferred on the Court under Section 397 has to be exercised on some judicial principle. If a situation arises, for invoking the inherent power of the Court under Section 561-A of the Code, the Court has to see whether the circumstances and the object for which the inherent power is to be exercised are in existence and can be achieved. It is equally well established that the inherent power is to be exercised to do the right and to undo a wrong in the course of administration of justice and this power ought to be exercised sparingly only when the Court feels that the ends of justice require it and not as a matter of routine."

Likewise, in the case of People vs Laureano. 8 N.Y. 2D 640 (Mar. 26, 1996), "New York Court of Appeals" observed the principle that sentences must run concurrently when the act constitutes one offence and is also a material element of another offence. This was with reference to penal law under relevant provisions of law while dealing with a case of

manslaughter in the first degree and robbery in the first degree when the same act caused the victim serious injuries and his death. Referring to these circumstances, the Court took the view that concurrent sentence must be imposed upon the convict.

14. Considering from another angle of restrictions & the power of Court that whether the discretion vested in the Court under Section 397 of the Code has been legislatively circumscribed and, if not, can the provision be so construed so as to impose limitations on exercise of power of the Court while awarding sentence. The answer is within the statutory interpretation that penal statutes are to be construed strictly while the remedial statutes would receive a liberal construction. By development of law, the distinction between liberal and strict construction has very much narrowed down and is only important in resolving a doubt which other canons of construction fail to solve when two or more constructions are equally open. In case of remedial statutes, the Court ought to give widest operation which the language of the provision permits. In case of pure penal statutes, it is also an equally settled principle that in penal or procedural provisions relating to criminal jurisprudence, liability or punishment would be capable of narrower construction, but the construction which will tilt the interpretation favorable to the accused will be preferred over the interpretation which would adversely affect the right of a person/accused under trial.

15. Therefore, keeping in view the facts and circumstances of the case, the manner in which the matter was decided by the learned trial Court i.e., in three cases by the one and the same Court and the other on different date however, in all the cases on the admission of accused/petitioner, the principle discussed hereinabove relating to the purpose, philosophy and logic of punishment this petition is disposed of in the term that all sentences awarded to the petitioner, as particularized in Table-2 of para 3 of this judgment, shall be deemed to run concurrently. Office is directed to send the copy of this judgment to the Superintendent Central Prison, Peshawar for compliance in accordance with law.

Announced:
29.07.2021.



JUDGE